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# 1

CIVIL ACTION NO. 09-5442

## CONSENT DECREE

# 1

United States Department of Justice  
Environmental & Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

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1 I. BACKGROUND

2 A. As a result of the release or threatened release of hazardous substances at or from  
3 the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce  
4 County, Washington ("CB/NT Site"), the U.S. Environmental Protection Agency ("EPA"),  
5 other governmental entities, and certain private parties have undertaken response actions at or  
6 in connection with the CB/NT Site under Section 104 and Section 106 of the Comprehensive  
7 Environmental Response, Compensation, and Liability Act of 1980, as amended  
8 ("CERCLA"), 42 U.S.C. §§ 9604 and 9606, and will undertake response actions in the future.  
9 In performing these response actions, EPA, other governmental entities, and said private  
10 parties have incurred and will continue to incur Response Costs at or in connection with the  
11 CB/NT Site.

12 B. On September 8, 1983, EPA placed the CB/NT Site on the National Priorities List  
13 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

14 C. Under a Cooperative Agreement with EPA, the Washington Department of  
15 Ecology ("Ecology") conducted a Remedial Investigation and Feasibility Study (RI/FS) of the  
16 CB/NT Site. Within the Tideflats area of the CB/NT Site, the RI/FS evaluated the nature and  
17 extent of contamination and defined problem areas for further study in the Sitcum, Blair,  
18 Milwaukee, Hylebos, St. Paul, Middle, Thea Foss (formerly known as City), and Wheeler-  
19 Osgood Waterways. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published  
20 notice of completion of the Feasibility Study and of the proposed plan for remedial action for  
21 the CB/NT Site in February 1989.

22 D. Because of the complexity of the CB/NT Site, response actions at the CB/NT Site  
23 are currently coordinated under seven operable units managed primarily by EPA and Ecology,  
24 including: (1) Operable Unit 01 - CB/NT Sediments; (2) Operable Unit 02 - ASARCO  
25 Tacoma Smelter; (3) Operable Unit 03 - Tacoma Tar Pits; (4) Operable Unit 04 - ASARCO

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Off-Property; (5) Operable Unit 05 - CB/NT Sources; (6) Operable Unit 06 - ASARCO Sediments; and (7) Operable Unit 07 - ASARCO demolition.

E. On September 30, 1989, EPA issued a Record of Decision (ROD) that identified eight (8) problem areas within OU1 that required sediment cleanup. The eight problem areas were the Head and Mouth of the Hylebos Waterway (hereinafter "Hylebos Waterway Problem Areas"), Sitcum Waterway, St. Paul Waterway, Middle Waterway, Head and Mouth of the Thea Foss Waterway (formerly City Waterway), and Wheeler-Osgood Waterway. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

F. EPA determined in the ROD that there were five major elements of the selected remedy for the CB/NT Site sediments and sources and that further investigation would determine which elements would be applied to each problem area:

- i. Site Use Restrictions - To protect human health by limiting access to edible resources prior to and during implementation of source and sediment remedial activities.
- ii. Source Control - To be implemented to prevent recontamination of sediments.
- iii. Natural Recovery - Included as a preferred remediation strategy for marginally contaminated sediments that are predicted to achieve acceptable sediment quality through either biodegradation, or burial and mixing with naturally accumulating clean sediments within a ten (10) year period.
- iv. Sediment Remedial Action - To address sediments containing contamination that is not expected to naturally recover within 10 years. The ROD required active sediment cleanup using one of the following four technologies: in-place capping, dredging and confined aquatic disposal, dredging and nearshore disposal, or dredging and upland disposal. The disposal option is to be identified during design of the remedial action.

1 v. Source and Sediment Monitoring - To refine cleanup volume estimates,  
2 characterize the effectiveness of source controls, and implement long-term monitoring  
3 of the remedial action(s) to ensure long-term protectiveness of the remedy.

4 G. Under a State Cooperative Agreement, EPA and Ecology agreed that Ecology  
5 would implement OU5 source control actions using state law authorities and EPA would stay  
6 in the lead for implementing the CB/NT sediment cleanup, OU1.

7 H. This Consent Decree involves settlement of claims for recovery of Response Costs  
8 associated with the Hylebos Waterway Problem Areas. The ROD determined that natural  
9 recovery would not sufficiently reduce contaminant concentrations in some areas of the  
10 Mouth and Head of the Hylebos Waterway within the ten (10) year period, so the ROD  
11 required source control and active sediment cleanup with one of four technology-based  
12 remedy options.

13 I. On November 29, 1993, six entities (collectively known as the Hylebos Cleanup  
14 Committee or "HCC") entered into an Administrative Order on Consent ("HCC AOC") with  
15 EPA for the preparation of, performance of, and reimbursement of oversight costs for Pre-  
16 remedial Design Activities for the Hylebos Waterway Problem Areas. By letter dated  
17 November 8, 2001, EPA confirmed that all activities required by the HCC AOC were  
18 performed, except payment of remaining oversight billings, in accordance with Section XXVI  
19 of the HCC AOC.

20 J. On August 3, 2000, EPA issued an Explanation of Significant Differences (ESD),  
21 pursuant to Section 117(c) of CERCLA, that explained the differences in the remedial action  
22 for three waterways including the Hylebos, which significantly changed, but did not  
23 fundamentally alter, the remedy selected in the ROD. The ESD finalized cleanup plans for  
24 three waterways within the CB/NT Site, selected disposal sites for all remaining contaminated  
25 sediment to be dredged and confined from the CB/NT Site, provided additional performance  
26

standards, and documented other differences from the ROD. Based on the studies and analysis conducted under the HCC AOC with respect to the Hylebos Waterway Problem Areas, the ESD provided details on the areal extent of sediment contamination in the Hylebos Waterway Problem Areas and the estimated volume of sediment that required remediation; designated the areas that were projected to naturally recover within 10 years of remedial action; outlined EPA's decision to dispose of contaminated sediments in Blair Slip 1 and an upland regional landfill; established performance standards for mitigation for the Remedial Action; and estimated the cost of the Remedial Action at the Hylebos Waterway. Notice and public comment were taken on the ESD and notice of the final ESD was published in accordance with Section 117(c) of CERCLA.

K. The United States has entered into two additional consent decrees with four other Potentially Responsible Parties ("PRPs") at the Hylebos Waterway Problem Areas under which those parties are performing the Remedial Design and Remedial Action selected by the ESD. See, United States v. ATOFINA Chemicals et al., Civ. No. C04-5319-RBL (W.D. Wash. June 2, 2004) and United States v. Port of Tacoma, Occidental Chemical Corp., et al., Civ. No. C05-5103-FDB (W.D. Wash. Feb. 8, 2005).

L. Certain of the Settling Defendants and other parties participated in a non-binding allocation, a process in which a third-party Allocator recommended shares of liability for all then-known potentially responsible parties associated with the Hylebos Waterway Problem Areas. The Allocator's recommendations, contained in his report, titled "Hylebos Waterway-Allocator's Final Cost Allocation Formula Report, dated May 22, 2000 ("Allocator's Report"), forms, in part, a basis for this settlement. EPA independently reviewed the Allocator's Report and other pertinent information, and, as to the Settling Defendants only, accepts the Allocator's numerical allocation for purposes of this settlement. The Settling Defendants do not agree that the information or conclusions contained in the Allocator's

1 Report accurately assesses their actual or potential liability or their allocable share of any  
2 costs for any CERCLA liabilities the Settling Defendants may have for the Hylebos  
3 Waterway Problem Areas.

4 M. The Settling Defendants do not admit any liability arising out of the transactions  
5 or events alleged to have occurred in connection with the Hylebos Waterway Problem Areas  
6 within the CB/NT Site. The Settling Defendants allege that their only known involvement at  
7 the CB/NT Site is with respect to the Hylebos Waterway Problem Areas.

8 N. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA  
9 notified the natural resource trustees on December 26, 2000, of negotiations with the PRPs  
10 regarding the release of hazardous substances that may have resulted in injury to the natural  
11 resources under Federal, State and Tribal trusteeship.

12 O. The United States and Settling Defendants agree, and by entering this Consent  
13 Decree this Court finds, that settlement without further litigation and without the admission or  
14 adjudication of any issue of fact or law is in the public interest and is the most appropriate  
15 means of resolving this action with respect to Settling Defendants, and that this Consent  
16 Decree is fair, reasonable, and in the public interest.

17 THEREFORE, with the consent of the Parties to this Consent Decree, it is  
18 ORDERED, ADJUDGED, and DECREED:

19 **II. JURISDICTION**

20 1. This Court has jurisdiction over the subject matter of this action pursuant to  
21 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal  
22 jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the  
23 underlying Complaint, Settling Defendants waive all objections and defenses that they may  
24 have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not  
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1 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce  
2 this Consent Decree.

### 3 III. PARTIES BOUND

4 2. This Consent Decree is binding upon and inures to the benefit of the United States  
5 and the Settling Defendants and their heirs, successors and assigns. Any change in ownership  
6 or corporate or other legal status of a Settling Defendant, including but not limited to, any  
7 transfer of assets or real or personal property shall in no way alter such Settling Defendant's  
8 responsibilities under this Consent Decree. This Consent Decree does not bind any person or  
9 State agency that is not a party to it.

### 10 IV. STATEMENT OF PURPOSE

11 3. By entering into this Consent Decree, the mutual objectives of the Parties are:  
12 a. to reach a final settlement among the Parties pursuant to Section 122 of  
13 CERCLA, 42 U.S.C. § 9622, by allowing Settling Defendants to make cash payments,  
14 including a premium, to resolve their alleged civil liability to the United States under Sections  
15 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, with regard to the Hylebos Waterway  
16 Problem Areas;  
17 b. to resolve the claims of the Settling Defendants which have been or could  
18 have been asserted against the United States with regard to the Hylebos Waterway Problem  
19 Areas as provided in this Consent Decree; and  
20 c. to provide for contribution protection for Settling Defendants with regard to  
21 Response Costs, pursuant to Sections 113(f)(2) and 122 of CERCLA, 42 U.S.C. §§ 9613(f)(2)  
22 and 9622, and as set forth in Section XII (Effect of Settlement) of this Consent Decree.

### 23 V. DEFINITIONS

24 4. Unless otherwise expressly provided herein, terms used in this Consent Decree  
25 that are defined in CERCLA or in regulations promulgated under CERCLA shall have the

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1 meaning assigned to them in the statute or regulations. Whenever the terms listed below are  
2 used in this Consent Decree, the following definitions shall apply:

3 a. "CERCLA" shall mean the Comprehensive Environmental Response,  
4 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

5 b. "Consent Decree" or "Decree" shall mean this Consent Decree and all  
6 appendices attached hereto. In the event of conflict between this Consent Decree and any  
7 appendix, the Consent Decree shall control.

8 c. "Commencement Bay Nearshore/Tideflats Superfund Site" ("CB/NT Site")  
9 shall mean the entire Commencement Bay Nearshore/Tideflats Superfund Site and project  
10 area, including contaminated sediments and sources of contamination within the CB/NT Site,  
11 located in the City of Tacoma, Pierce County, Washington, and as defined in the CB/NT  
12 Record of Decision, dated September 30, 1989.

13 d. "Date of Lodging" shall mean the day that this Consent Decree is lodged  
14 with the Court for public comment pursuant to Paragraph 28.

15 e. "Day" shall mean a calendar day. In computing any period of time under  
16 this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday,  
17 the period shall run until the close of business of the next working day.

18 f. "Effective Date" shall mean the day that this Consent Decree is entered by  
19 the Court as a judicial order.

20 g. "EPA" shall mean the United States Environmental Protection Agency and  
21 any successor departments, agencies, or instrumentalities.

22 h. "EPA Hazardous Substance Superfund" shall mean the Hazardous  
23 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

24 i. "Hylebos Waterway Problem Areas" shall mean all areas in which  
25 contaminated sediments are located, intertidal and subtidal, that require remedial action at and  
26

1 adjacent to the Mouth and the Head of the Hylebos Waterway, which are two of eight  
2 Problem Areas only within OU1 of the CB/NT Site. These Problem Areas are described in  
3 the CB/NT Site Record of Decision, dated September 30, 1989, and are more specifically  
4 delineated in the Figures 3A, 3B, and 3C in the August 3, 2000 ESD. This term does not  
5 include Area 5106 which is specifically designated in an Action Memorandum dated July 6,  
6 2001, and property which is the subject of OU5, which encompasses upland properties  
7 adjacent to the Hylebos Waterway that are past, present or future sources of hazardous  
8 substances to the Hylebos Waterway Problem Areas.

9 j. "Hylebos Waterway Problem Areas Special Account" shall mean the  
10 special account established for the Hylebos Waterway Problem Areas by EPA pursuant to  
11 Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3), and created by the Consent Decree  
12 entered in U.S. v. Bay Chemical Company, et al, C99-5521 (RJB), by the U.S. District Court  
13 for the Western District of Washington on June 23, 2000.

14 k. "Interest" shall mean interest at the current rate specified for interest on  
15 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,  
16 compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).  
17 The applicable rate of interest shall be the rate in effect at the time the interest accrues.

18 l. "Paragraph" shall mean a portion of this Consent Decree identified by an  
19 Arabic numeral or an upper or lower case letter.

20 m. "Parties" shall mean the United States and the Settling Defendants.

21 n. "Section" shall mean a portion of this Consent Decree identified by a  
22 roman numeral.

23 o. "Settling Defendants" shall mean those persons and corporations listed in  
24 Appendix A.

1 p. "Record of Decision" or "ROD" shall mean the EPA Record of Decision  
2 relating to the CB/NT Site signed on September 30, 1989, by the Regional Administrator,  
3 EPA Region 10, all attachments thereto and incorporating all significant differences thereto  
4 documented in the ESD issued on July 28 , 1997 and the ESD issued on August 3, 2000. The  
5 2000 ESD may be referred to or discussed individually or separately from the 1989 ROD in  
6 this Consent Decree where appropriate.

7 q. "Response Costs" shall mean all costs of "response" as that term is  
8 defined by Section 101(25) of CERCLA, 42 U.S.C. §9601(25), incurred by the United States  
9 in connection with the Hylebos Waterway Problem Areas. Response Costs shall also include  
10 any CB/NT area-wide site costs billed to the CB/NT area-wide account that EPA has or may  
11 attribute or allocate to the Hylebos Waterway Problem Areas. Response Costs shall not  
12 include costs related to upland hazardous waste cleanups and/or source control that were  
13 incurred by any entity. The phrase "Past Response Costs" shall mean all costs incurred  
14 through February 28, 2009, including any Interest calculated thereon. The phrase "Future  
15 Response Costs" shall mean all Response Costs other than Past Response Costs.

16 r. "United States" shall mean the United States of America, including all of  
17 its departments, agencies, and instrumentalities, which includes without limitation EPA.

## 18 VI. PAYMENT

### 19 5. Payment of Response Costs and Interest.

20 a. Each Settling Defendant shall make certain payments to the United States  
21 plus Interest on each payment calculated from the Date of Lodging of this Consent Decree  
22 through the date of each payment. The amount of each payment and the dates by which each  
23 payment must be received is specified for each Settling Defendant in Appendix B to this  
24 Consent Decree. All payments and associated Interest shall be made by FedWire Electronic  
25 Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT

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1 instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S.  
2 Attorney's Office in the Western District of Washington following lodging of the Consent  
3 Decree.

4 6. Each Settling Defendant's total payment(s), as set forth in Appendix B, includes an  
5 amount for:

6 a. Past Response Costs incurred at or in connection with the Hylebos  
7 Waterway Problem Areas; and

8 b. Future Response Costs to be incurred at or in connection with the Hylebos  
9 Waterway Problem Areas; and

10 c. a one hundred percent (100%) premium on Future Response Costs to cover  
11 the risks and uncertainties associated with this settlement, including but not limited to, the  
12 risk that total Response Costs incurred or to be incurred in connection with the Hylebos  
13 Waterway Problem Areas, by the United States will exceed the cost estimate for Future  
14 Response Costs or exceed the amount other PRPs can contribute.

15 7. At the time of each payment made pursuant to Paragraph 5 above, each Settling  
16 Defendant shall send notice that such payment has been made to EPA and the Department of  
17 Justice ("DOJ") in accordance with Section XIII (Notices and Submissions). Such notice  
18 shall reference the EPA Region and Site/Spill Identification Number 108N and 107C, DOJ  
19 Case Number 90-11-3-09454/1, and the civil action number of this action.

20 8. The United States shall deposit all payments made pursuant to Paragraph 5 of this  
21 Consent Decree into the Hylebos Waterway Problem Areas Special Account.

22 9. After completion of all remedial actions for the Hylebos Waterway Problem  
23 Areas, any balance remaining in the Hylebos Waterway Problem Areas Special Account shall  
24 be transferred by EPA to the EPA Hazardous Substance Superfund.

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VII. FAILURE TO COMPLY WITH CONSENT DECREE

10. Stipulated Penalties.

a. If any Settling Defendant fails to make any payment required to be made pursuant to Paragraph 5 of this Consent Decree and as specified in Appendix B, that Settling Defendant shall pay stipulated penalties of \$1,000 per day for each day such payment is late. Such stipulated penalties are in addition to Interest calculated from the Date of Lodging through the date on which payment is made as required by Paragraph 5.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments of stipulated penalties made under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be deposited in the Hylebos Waterway Problem Areas Special Account to be retained and used to conduct or finance the response action at or in connection with the Hylebos Waterway Problem Areas. The check, or the letter accompanying the check, shall reference the name and address of the party(ies) making the payment, the Hylebos Waterway Problem Areas, and the Site/Spill Identification Numbers 108N and 107C, and DOJ Case Number 90-11-3-09454/1 and shall be sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Office  
P.O. Box 979077  
St. Louis, MO 63197-9000

11. If the United States brings an action to enforce this Consent Decree against a Settling Defendant and prevails in said action, that Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time. Payments made under this Section VII shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of such Settling Defendant's failure to comply with the

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requirements of this Consent Decree. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse such Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

#### VIII. CERTIFICATIONS BY SETTLING DEFENDANTS

12. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief:

a. in response to any request for information by EPA, it conducted a thorough, comprehensive, good faith search for documents and disclosed any documents or information responsive to the request that was, at the time of the request, in the possession of its officers, directors, employees, contractors, or agents, which relates in any way to the Hylebos Problem Areas;

b. to the extent it provided information to the Allocator, such information was true and accurate;

c. it has no information that suggests its contributions of hazardous substances, pollutants, or contaminants to one or both of the Hylebos Waterway Problem Areas was greater than determined in the Allocator Report; and

d. it exercised its best efforts not to alter, mutilate, discard, destroy, or otherwise dispose of any records, documents, or other information relating to its potential liability regarding the Hylebos Waterway Problem Areas after EPA notified it of its potential liability for EPA response costs.

13. The certifications contained in Paragraph 12 inure only to the benefit of the United States and the Settling Defendants, and not to any other parties.

IX. COVENANT NOT TO SUE BY UNITED STATES

14. Covenant Not to Sue Settling Defendants by United States. Except as specifically provided in Section X (Reservations of Rights by the United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Hylebos Waterway Problem Areas. The covenant not to sue for each Settling Defendant shall take effect upon receipt by the United States of that Settling Defendant's payment and Interest, and, in the case of a Settling Defendant making multiple payments, on receipt of the first payment and Interest, required by Section VI (Payment) and any amount due under Section VII (Failure to Comply with Consent Decree). The covenant not to sue as to each Settling Defendant is conditioned upon the satisfactory performance by that particular Settling Defendant of its obligations under this Consent Decree, including but not limited to subsequent payments required by Section VI of this Consent Decree and Appendix B, as well as the veracity of the certification made in Paragraph 12 of this Consent Decree. The unsatisfactory performance of such obligations by one or more Settling Defendants shall not invalidate, or in any way diminish, the covenant not to sue as to any other Settling Defendant. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

15. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, its right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel one or more Settling Defendants to perform further response actions relating to the Hylebos Waterway Problem Areas or to reimburse the United States for additional costs of response

1 if conditions at the Hylebos Waterway Problem Areas or information unknown to EPA as of  
2 the Date of Lodging are discovered and, together with any other relevant information, indicate  
3 that the Remedial Action is not protective of human health or the environment.

4 16. The covenant not to sue by the United States set forth in Paragraph 14 does not  
5 pertain to any claims other than those expressly specified in that Paragraph, including but not  
6 limited to any civil or criminal claims under other statutes or under other Sections of  
7 CERCLA. The United States also reserves and this Consent Decree is without prejudice to,  
8 all rights against each Settling Defendant with respect to the following claims under Section  
9 106 or 107 of CERCLA:

10 a. liability for failure of a Settling Defendant to meet a requirement of this  
11 Consent Decree;

12 b. liability for costs incurred or to be incurred by the United States that are  
13 not within the definition of Response Costs;

14 c. criminal liability;

15 d. liability for damages for injury to, destruction of, or loss of natural  
16 resources, and for the costs of any natural resource damage assessments within or outside of  
17 the Hylebos Waterway Problem Areas;

18 e. liability for injunctive relief or administrative order enforcement under  
19 Section 106 of CERCLA, 42 U.S.C. § 9606, or for response costs under Section 107(a) of  
20 CERCLA, 42 U.S.C. § 9607(a), based upon Settling Defendants' ownership or operation of  
21 any part of the CB/NT Site, or upon Settling Defendants' transportation, treatment, storage, or  
22 disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a  
23 hazardous substance or a solid waste at or in connection with the CB/NT Site, after execution  
24 of this Consent Decree by Settling Defendants; and

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1 f. liability arising from the past, present, or future disposal, release or threat of  
2 release of a hazardous substance, pollutant, or contaminant outside of the Hylebos Problem  
3 Areas.

4 17. Notwithstanding any other provision in this Consent Decree, the United States  
5 reserves, and this Consent Decree is without prejudice to, the right to reopen or institute  
6 proceedings against any individual Settling Defendant in this action or in a new action to  
7 reimburse the United States for Response Costs, and/or to issue an administrative order to any  
8 individual Settling Defendant seeking to compel that Settling Defendant to perform response  
9 actions relating to the Hylebos Waterway Problem Areas, and/or to reimburse the United  
10 States for additional costs of response if:

11 a. the United States finds that the individual Settling Defendant's  
12 Certifications made in Section VIII of this Decree are untrue or inaccurate in a material way;  
13 or

14 b. information is discovered that indicates that such individual Settling  
15 Defendant contributed hazardous substances to the Hylebos Waterway Problem Areas in such  
16 greater amount or such greater toxic or other hazardous effects that EPA determines that the  
17 discovered information materially changes the basis for entering into this settlement with the  
18 particular Settling Defendant.

19 **XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

20 18. Settling Defendants covenant not to sue and agree not to assert any claims or  
21 causes of action against the United States or its contractors or employees with respect to the  
22 remedial action at the Hylebos Waterway Problem Areas or this Consent Decree, including,  
23 but not limited to:

1 a. any direct or indirect claim for reimbursement from the EPA Hazardous  
2 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA,  
3 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

4 b. any claim against the United States arising out of response activities at the  
5 Hylebos Waterway Problem Areas, including any claim under the United States Constitution,  
6 the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as  
7 amended, or at common law; or

8 c. any claim against the United States pursuant to Sections 107 and 113 of  
9 CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Hylebos Waterway Problem Areas.

10 19. Nothing in this Consent Decree shall be deemed to constitute approval or  
11 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §  
12 9611, or 40 C.F.R. Part 300.700(d).

13 20. Settling Defendants covenant not to sue and agree not to assert any claims or  
14 causes of action against each other with regard to the matters addressed by this Consent  
15 Decree pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

16 **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

17 21. Nothing in this Consent Decree shall be construed to create any rights in, or grant  
18 any cause of action to, any person not a Party to this Consent Decree. The United States and  
19 each Settling Defendant expressly reserve any and all rights (including, but not limited to, any  
20 right to contribution), defenses, claims, demands, and causes of action which each Party may  
21 have with respect to any matter, transaction, or occurrence relating in any way to the Hylebos  
22 Waterway Problem Areas or the CB/NT Site against any person not a party to this Consent  
23 Decree. Nothing in this Consent Decree diminishes the right of the United States, pursuant  
24 to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such  
25  
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persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

22. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and that each Settling Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken and to be taken by the United States or by any other entity, and Response Costs incurred in connection with the Hylebos Waterway Problem Areas, including past and future Response Costs incurred and to be incurred by the United States, and past and future Response Costs incurred by any other entities in connection with the Hylebos Waterway Problem Areas. "Matters addressed" does not include any claims under contractual indemnities or any other private contractual obligations.

23. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify the EPA and DOJ in writing within 30 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify the EPA and DOJ within 10 days of any service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs, or other relief relating to the Hylebos

1 Waterway Problem Areas, Settling Defendants shall not assert, and may not maintain, any  
2 defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue  
3 preclusion, claim-splitting, or other defenses based upon any contention that the claims raised  
4 in the subsequent proceeding were or should have been brought in the instant action;  
5 provided, however, that nothing in this Paragraph affects the enforceability of the covenant  
6 not to sue included in Paragraph 14.

7 XIII. NOTICES AND SUBMISSIONS

8 25. Whenever, under the terms of this Consent Decree, notice is required to be given  
9 or a document is required to be sent by one party to another, it shall be directed to the  
10 individuals at the addresses specified below, unless those individuals or their successors give  
11 notice of a change to the other parties in writing. Written notice as specified herein shall  
12 constitute complete satisfaction of any written notice requirement of the Consent Decree with  
13 respect to the Department of Justice, EPA, and Settling Defendants.

14 As to Plaintiff, the United States

15 As to the Department of Justice:

16 Chief, Environmental Enforcement Section  
17 United States Department of Justice  
18 DJ No. 90-11-3-09454/1  
19 P.O. Box 7611  
20 Washington, D.C. 20044-7611

21 As to EPA

22 Alexander Fidis, Esq.  
23 Assistant Regional Counsel  
24 Office of Regional Counsel  
25 United States Environmental Protection Agency, Region 10  
26 ORC-158, 1200 Sixth Avenue  
27 Seattle, Washington 98101

28 With a copy to:

Jonathan Williams  
Remedial Project Manager  
United States Environmental Protection Agency, Region 10

**United States v. Detrex (W.D. Wash)**  
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United States Department of Justice  
Environmental & Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

1 ECL- 111  
1200 Sixth Avenue  
2 Seattle, Washington 98101

3 Morris Lance, Finance Section  
United States Environmental Protection Agency, Region 10  
4 1200 Sixth Avenue  
Seattle, Washington 98101

5 U.S. Environmental Protection Agency  
6 Servicing Finance Office  
26 West Martin Luther King Drive  
7 MS-NWD  
Cincinnati, Ohio 45268

8  
9 **As to Settling Defendants**

10 **As to Detrex Corporation:**

11 Robert Currie, Esq.  
Vice President, General Counsel and Corporate Secretary  
12 Detrex Corporation  
24901 Northwestern Highway  
13 Suite 410  
Southfield, Michigan 48075-2203

14 **With a Copy to:**

15 Cortney E. Goldberg, Esq.  
BODMAN LLP  
16 6th Floor at Ford Field  
1901 St. Antoine Street  
17 Detroit, Michigan 48226

18 **As to Goodrich Corporation:**

19 Heidi B. Goldstein  
Thompson Hine LLP  
20 127 Public Square  
3900 Key Center  
21 Cleveland, OH 44114

22 **As to Donald Oline:**

23 Don Oline  
1940 Marine View Drive  
24 Tacoma, WA 98422

25 Clark J. Davis  
Davis Roberts & Johns

26  
27 **United States v. Detrex (W.D. Wash)**  
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Environmental Enforcement Section  
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7525 Pioneer Way, Suite 202  
Gig Harbor, WA 98335

As to Portac:

Portac, Inc.  
Attn.: Gary Takahashi, President  
The Fabulich Center  
3600 Port of Tacoma Road, Suite 302  
Tacoma, Washington 98424

As to Weyerhaeuser:

Weyerhaeuser Company  
Law Department  
Attn.: Vice President and General Counsel  
P.O. Box 9777  
Federal Way, Washington 98063-9777

With a copy to:

Claire S. Grace  
Vice President and Corporate Secretary  
P.O. Box 9777  
Federal Way, Washington 98063-9777  
(Ship to):  
33663 Weyerhaeuser Way South  
Federal Way, WA 98003

**XIV. RETENTION OF JURISDICTION**

26. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XV. INTEGRATION/APPENDICES**

27. This Consent Decree and Appendices A and B, attached hereto constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. "Appendix A" is the list of Settling Defendants. "Appendix B sets forth the payments that each Settling Defendant is required to make pursuant to this Consent Decree.

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1           33. Each Settling Defendant shall identify, on the attached signature page, the name  
2 and address of an agent who is authorized to accept service of process by mail on behalf of  
3 that Party with respect to all matters arising under or relating to this Consent Decree. Settling  
4 Defendants hereby agree to accept service including, but not limited to, service of a summons,  
5 in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal  
6 Rules of Civil Procedure and any applicable local rules of this Court. The Parties agree that  
7 Settling Defendants need not file an Answer to the Complaint in this action unless or until the  
8 United States withdraws its consent to the Consent Decree or the Court expressly declines to  
9 enter this Consent Decree.

10  
11 IT IS SO ORDERED this 2nd day of September, 2009.

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13 RONALD B. LEIGHTON  
14 UNITED STATES DISTRICT JUDGE  
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27 **United States v. Detrex (W.D. Wash)**  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United  
2 States v. Detrex, et. al., relating to the Hylebos Waterway Problem Areas, within the  
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce  
4 County, Washington:

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**FOR THE UNITED STATES OF AMERICA**

Date: \_\_\_\_\_

\_\_\_\_\_  
ELLEN M. MAHAN  
Deputy Section Chief  
Environmental Enforcement Section  
Environmental and Natural Resources Division

Date: \_\_\_\_\_

\_\_\_\_\_  
ELIZABETH L. LOEB  
Trial Attorney  
Environmental Enforcement Section  
Environmental and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 616-8916  
Elizabeth.Loeb@usdoj.gov

**United States v. Detrex (W.D. Wash)**  
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JEFFERY C. SULLIVAN  
United States Attorney for the  
Western District of Washington

Date: July 15, 2009

/s/ Brian Kipnis  
BRIAN KIPNIS  
Assistant U.S. Attorney  
Office of the United States Attorney  
Western District of Washington  
5200 United States Courthouse  
700 Stewart Street  
Seattle, WA 98101-1271.  
206-553-4426  
Brian.Kipnis@usdoj.gov

**United States v. Detrex (W.D. Wash)**  
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Environmental Enforcement Section  
P.O. Box 7611  
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Washington, D.C. 20044

1  
2  
3 Date: \_\_\_\_\_

\_\_\_\_\_  
DANIEL D. OPALSKI  
Director, Environmental Cleanup Office  
Region 10  
U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101

4  
5  
6  
7  
8 Date: \_\_\_\_\_

\_\_\_\_\_  
ALEXANDER FIDIS, ESQ.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101  
(206) 553-4710  
Fidis.Alexander@epa.gov

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Washington, D.C. 20044

**FOR DETREX CORPORATION**

Date:

\_\_\_\_\_  
Robert Currie, Esq.  
Vice President, General Counsel and Corporate  
Secretary  
Detrex Corporation  
24901 Northwestern Highway  
Suite 410  
Southfield, Michigan 48075-2203  
248-358-5800 (T)  
248-799-7192 (F)  
E-mail: [rcurrie@detrex-hq.com](mailto:rcurrie@detrex-hq.com)

Date:

\_\_\_\_\_  
Cortney E. Goldberg, Esq.  
BODMAN LLP  
6th Floor at Ford Field  
1901 St. Antoine Street  
Detroit, Michigan 48226  
313-393-7594 (T)  
313-393-7579 (F)  
E-mail: [cgoldberg@bodmanllp.com](mailto:cgoldberg@bodmanllp.com)

Agent Authorized to Accept Service:

\_\_\_\_\_  
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\_\_\_\_\_

**United States v. Detrex (W.D. Wash)**  
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Washington, D.C. 20044



**FOR DONALD OLINE**

Date:

\_\_\_\_\_  
Don Oline  
1940 Marine View Drive  
Tacoma, WA 98422

Date:

\_\_\_\_\_  
Clark J. Davis  
Davis Roberts & Johns  
7525 Pioneer Way, Suite 202  
Gig Harbor, WA 98335  
**[need phone, fax and email]**

Agent Authorized to Accept Service:

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**United States v. Detrex (W.D. Wash)**  
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Washington, D.C. 20044

**FOR PORTAC, INC.**

Date:

\_\_\_\_\_  
Gary Takahashi, President  
The Fabulich Center  
3600 Port of Tacoma Road, Suite 302  
Tacoma, Washington 98424  
**[need phone, fax and email]**

Agent Authorized to Accept Service:

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**FOR WEYERHAEUSER COMPANY:**

Date:

Sara Schreiner Kendall  
Vice President- Environment, Health &  
Safety  
Weyerhaeuser Company  
P.O. Box 9777  
Federal Way, Washington 98063-9777  
**[need phone, fax email]**

Agent Authorized to Accept Service:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPENDIX A**

DETREX CORPORATION

GOODRICH CORPORATION On Behalf Of LUBRIZOL ADVANCED  
MATERIALS FCC, INC. and NOVEON KALAMA, INC.

DONALD OLINE

PORTAC, INC.

WEYERHAEUSER COMPANY

**APPENDIX B**

**PAYMENTS REQUIRED FOR EACH DEFENDANT**

**DETREX CORPORATION:**

Payment Amounts for Detrex

Past Costs	Future Costs	Premium on Future Costs	Total Payment Amount
<b>700,721.96</b>	<b>149,639.02</b>	<b>149,639.02</b>	<b>\$1,000,000.00</b>

Payment Dates for Detrex

Date by Which Payment Must be Received	Amount for Each Payment
Within Thirty (30) Day of the Effective Date	\$250,000.00
Within One Year of the Effective Date	\$250,000.00
Within Two Years of the Effective Date	\$250,000.00
Within Three Years of the Effective Date	\$250,000.00
<b>Total Payment</b>	<b>\$1,000,000.00</b>

**GOODRICH CORPORATION On Behalf of LUBRIZOL ADVANCED MATERIALS, FCC, INC. and NOVEON KALAMA, INC.**

Payment Amounts for Goodrich Corporation

Past Costs	Future Costs	Premium on Future Costs	Total Payment Amount
<b>\$16,933.81</b>	<b>4,552.20</b>	<b>4,552.20</b>	<b>26,038.21</b>

Payment Dates for Goodrich

Date by Which Payment Must be Received	Amount for Each Payment
Within Thirty (30) Days of the Effective Date	\$26,038.21

<b>Total Payment</b>	<b>\$26,038.21</b>
----------------------	--------------------

**DONALD OLINE:**

Payment Amounts for Donald Oline

Past Costs	Future Costs	Premium on Future Costs	Total Payment Amount
<b>\$309,581.46</b>	<b>\$64,209.27</b>	<b>\$64,209.27</b>	<b>\$438,000.00</b>

Payment Dates for Donald Oline

<b>Date by Which Payment Must be Received</b>	<b>Amount for Each Payment</b>
Within Thirty (30) Days of the Effective Date	\$438,000.00
<b>Total Payment</b>	<b>\$438,000.00</b>

**PORTAC, INC.:**

Payment Amounts for Portac:

Past Costs	Future Costs	Premium on Future Costs	Total Payment Amount
<b>\$108,564.56</b>	<b>\$29,167.80</b>	<b>\$29,167.80</b>	<b>\$166,900.16</b>

Payment Dates for Portac:

<b>Date by Which Payment Must be Received</b>	<b>Amount of Each Payment</b>
Within Thirty (30) Days of the Effective Date	\$166,900.16
<b>Total Payment</b>	<b>\$166,900.16</b>

**WEYERHAEUSER COMPANY:**

**Payment Amounts for Weyerhaeuser**

Past Costs	Future Costs	Premium on Future Costs	Total Payment Amount
<b>\$490,640.92</b>	<b>\$104,679.54</b>	<b>\$104,679.54</b>	<b>\$700,000.00</b>

**Payment Dates for Weyerhaeuser**

<b>Date by Which Payment Must be Received</b>	<b>Amount of Each Payment</b>
Within Thirty (30) Days of the Effective Date	\$700,000.00
<b>Total Payment</b>	<b>\$700,000.00</b>